

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9846 of 2006****For Approval and Signature:****HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ARVINDLAL RATILAL & 2 - Petitioner(s)
Versus
SURAT MUNICIPAL CORPORATION THR' COMMISSIONER & 1 -
Respondent(s)

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Appearance :

MR AJ SHASTRI for Petitioner(s) : 1 - 3.
MR PG DESAI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE R.P.DHOLAKIA

Date : 04/05/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Rule. Learned counsel Mr.P.G.Desai, who usually appears for Surat Municipal Corporation, present in the court, was directed to accept notice of rule for respondents. Learned counsel for the petitioner has served copy of this petition to Mr.Desai for respondents.

Heard learned counsel for the petitioners and Mr.Desai for respondent-Corporation.

The petitioners have challenged in this petition the impugned notice Annexure-B dated 5.4.2006 issued by the respondent No.2-Executive Engineer under Section 260(1) (a) of the Bombay Provincial Municipal Corporation Act (for short "B.P.M.C.Act") to the petitioners calling upon them to show cause as to why action against them under Section 260(2) of the B.P.M.C. Act should not be taken. The said notice was replied on 10.4.2006 by Shantilal Harkishandas-petitioner No.3. Thereafter, they have filed this petition on 27.4.2006, but moved for urgent orders today.

During the course of arguments, it was transpired that the petitioners were served with final notice dated 24.4.2006 under Section 260(1) of the B.P.M.C. Act by the respondent No.2-Executive Engineer, wherein it is stated that their reply dated 13.4.2006 cannot be accepted and they were asked to remove the construction within three days from the date of the receipt of the notice.

In view of the above, learned counsel Mr.Desai for the respondent-Corporation submitted that once the final

decision is taken by the competent authority, then the writ petition at the instance of the petitioners before this court under Article 226 of the Constitution of India will not be a proper remedy as many disputed questions of facts are involved in it. He can avail any other alternative remedy before any appropriate forum by way of appropriate proceedings, including remedy of suit before the Civil Court.

In view of the above, learned counsel for the petitioners seeks permission to withdraw this petition as he wants to avail alternative remedy to which learned counsel Mr.Desai for the respondents has no objection. Accordingly, permission is granted. Disposed of as withdrawn. Rule discharged with no order as to costs.

(B.J.SHETHNA, J.)

(R.P.DHOLAKIA, J.)

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